IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6427 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KHARVA MENABEN KARA KAPTA - Petitioner(s)

Versus

COLLECTOR & 3 - Respondent(s)

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Appearance :

MR NV ANJARIA for Petitioner(s) : 1,
MR SIRAJ GORI, AGP r Respondent(s) : 1,
MR YS MANKAD for Respondent(s) : 2,
MR YOGESH S LAKHANI for Respondent(s) : 3, 3.2.1, 3.2.2,3.2.3 - 4.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 18/11/2005

ORAL JUDGMENT

In the present petition, the petitioner has challenged the order dated 11th April 2000 passed by the Collector, Kutch. By the said order, the Collector was

pleased to declare that the resolution of the Mandvi Muncipality No.408 dated 18.2.99 is not in conformity with the provisions of section 65(1) and (2) of the Gujarat Municipalities Act. The Collector was accordingly pleased to suspend the execution of the said resolution in exercise of powers under section 258 of the Gujarat Municipalities Act.

2. In essence, by the resolution in question, the Mandvi Municipality, respondent No.2 herein was pleased to grant on lease for a period of ten years an open piece of land admeasuring 117 sq. meters to the petitioner on a monthly rent of Rs.200/-. Section 65(1) of the Gujarat Municipalities Act provides that it will be competent for the Muncipality subject to the restrictions contained in sub-section (2) to lease, sell or otherwise transfer any movable or immovable property which has become vested or acquired by the Municipality in so far as such lease, sale or transfer is not inconsistent with the provisions and purposes of the said Act. Sub-section (2) of section 65 in turn provides, inter alia, that in case of every lease or sale under sub-section (1) of section 146 and of a lease of immovable property for a term exceeding 10 years and of every sale or other transfer of such

immovable property, market value of which exceeds one lakh of rupees, previous permission of the State Government is required. In the present case, lease granted in favour of the petitioner by the Municipality was not for a period exceeding 10 years. There is no dispute about the fact that the land in question is vested in the Municipality. The requirement of taking permission from the Government under sub-section (2) of section 65 before granting such a lease therefore was not there. The Collector, therefore, erred in striking down the order passed in favour of the petitioner.

3. In the result, the impugned order dated 11.4.2000 is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)